

factually related proceeding. The reviewing authority, the presiding officer, or any employee or person involved in the decisional process of a proceeding shall communicate *ex parte* with respect to the merits of that or a factually related proceeding only with persons employed by or assigned to work with them and who perform no investigative or prosecuting function in connection with the proceeding.

§ 81.114 Expeditious treatment.

Requests for expeditious treatment of matters pending before the responsible Department official or the presiding officer are deemed communications on the merits, and are improper except when forwarded from parties to a proceeding and served upon all other parties thereto. Such communications should be in the form of a motion.

§ 81.115 Matters not prohibited.

A request for information which merely inquires about the status of a proceeding without discussing issues or expressing points of view is not deemed an *ex parte* communication. Such requests should be directed to the Civil Rights hearing clerk. Communications with respect to minor procedural matters or inquiries or emergency requests for extensions of time are not deemed *ex parte* communications prohibited by § 81.113. Where feasible, however, such communications should be by letter with copies to all parties. *Ex parte* communications between a respondent and the responsible Department official or the Secretary with respect to securing such respondent's voluntary compliance with any requirement of part 80 of this title are not prohibited.

§ 81.116 Filing of *ex parte* communications.

A prohibited communication in writing received by the Secretary, the reviewing authority, or by the presiding officer, shall be made public by placing it in the correspondence file of the docket in the case and will not be considered as part of the record for decision. If the prohibited communication is received orally a memorandum setting forth its substance shall be made and filed in the correspondence section of the docket in the case. A person re-

ferred to in such memorandum may file a comment for inclusion in the docket if he considers the memorandum to be incorrect.

Subpart L—Posttermination Proceedings

§ 81.121 Posttermination proceedings.

(a) An applicant or recipient adversely affected by the order terminating, discontinuing, or refusing Federal financial assistance in consequence of proceedings pursuant to this title may request the responsible Department official for an order authorizing payment, or permitting resumption, of Federal financial assistance. Such request shall be in writing and shall affirmatively show that since entry of the order, it has brought its program or activity into compliance with the requirements of the Act, and with the Regulation thereunder, and shall set forth specifically, and in detail, the steps which it has taken to achieve such compliance. If the responsible Department official denies such request the applicant or recipient shall be given an expeditious hearing if it so requests in writing and specifies why it believes the responsible Department official to have been in error. The request for such a hearing shall be addressed to the responsible Department official and shall be made within 30 days after the applicant or recipient is informed that the responsible Department official has refused to authorize payment or permit resumption of Federal financial assistance.

(b) In the event that a hearing shall be requested pursuant to paragraph (a) of this section, the hearing procedures established by this part shall be applicable to the proceedings, except as otherwise provided in this section.

Subpart M—Definitions

§ 81.131 Definitions.

The definitions contained in § 80.13 of this subtitle apply to this part, unless the context otherwise requires, and the term *reviewing authority* as used herein includes the Secretary of Health and Human Services, with respect to action by that official under § 81.106.

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Transition provisions: (a) The amendments herein shall become effective upon publication in the FEDERAL REGISTER.

(b) These rules shall apply to any proceeding or part thereof to which Part 80 of this title as amended effective October 19, 1967 (published in the FEDERAL REGISTER for October 19, 1967), and as the same may be hereafter amended, applies. In the case of any proceeding or part thereof governed by the provisions of part 80 as that part existed prior to such amendment, and rules in this part 81 shall apply as if these amendments were not in effect.

PART 82—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

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AUTHORITY: 41 U.S.C. 701 *et seq.*

SOURCE: 68 FR 66557, 66632, Nov. 26, 2003, unless otherwise noted.

Subpart A—Purpose and Coverage

§ 82.100 What does this part do?

This part carries out the portion of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 *et seq.*, as amended) that applies to grants. It also applies the provisions of the Act to cooperative agreements and other financial assistance awards, as a matter of Federal Government policy.

§ 82.105 Does this part apply to me?

(a) Portions of this part apply to you if you are either—

(1) A recipient of an assistance award from the HHS; or

(2) A(n) HHS awarding official. (See definitions of award and recipient in §§ 82.605 and 82.660, respectively.)

(b) The following table shows the subparts that apply to you: